IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 472 of 2000
WITH
MISC. CRIMINAL APPLICATION NO. 3400 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHIKBHAI HUSSAINBHAI KHATKI

Versus

STATE OF GUJARAT

Appearance:
MRS SHILPA J UNWALLA for appellant accused.
MR PM VYAS, Advocate appointed in Cr.M.A 3400/2001.
MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 15/06/2001

ORAL JUDGEMENT

Admit. At the joint request of the learned

Counsel for the appellant and APP, appeal is taken up for hearing and final disposal.

2. The appellant accused Ashikbhai Hussainbhai Khatki alongwith accused Rukaiyabibi were tried for the offence under Sections 366 and 380 of the Indian Penal Code before the Court of learned Additional Sessions Judge, Godhra. After appreciating the evidence on record, the learned Judge acquitted the accused No.2 Rukaiyabibi for the offences punishable under Section 366 and 380 of the Indian Penal Code, by giving benefit of doubt to her. He also acquitted appellant accused No.1 Ashikbhai Hussainbai Khatki for the offence under Section 380 of the Indian Penal Code, however, found him guilty for the offence punishable under Section 366 of the Indian Penal code and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs. 1,000/-, in default to further undergo rigorous imprisonment for one year. This order of conviction and sentence was passed by the learned Judge on 10.2.2000 in Sessions Case No. 206/93.

3. The appellant accused was absolutely poor and unable to challenge his order of conviction and sentence well in time during the period of limitation, but later on he sent the appeal through jail, which was barred by period of limitation. The delay in filing of the appeal was however, condoned by the learned Single Judge of this Court on 27.4.2001 and this Criminal Appeal was ordered to be placed for admission and hearing. Accordingly, this appeal is placed today.

4. During the pendency of the Appeal, he has also submitted aforesaid Criminal Misc. Application No. 3400/2001 for enlarging him on bail. However, with the joint request of the learned Counsel Shri Vyas for the appellant and learned Additional Public Prosecutor Shri Gohil for the State, main appeal itself is heard and disposed of. Therefore, no separate order is required to be passed on the bail application.

5. Record and proceedings in this case were called for. Having perused the same and considering the reasons assigned by the learned Judge for convicting the accused, which is mainly based on the admission of the accused under Section 313 of the Cr.P.C, it cannot be said that the learned Judge has committed any error in convicting the accused under Section 366 of the Indian Penal Code. In fact, learned Counsel Shri Vyas has also not pressed the order of conviction passed by the learned trial Judge. However, he submitted that the accused is very

poor and he was only 33 years when the offence was committed; the alleged offence took place way back in June, 1992; that he has got small children and a widow mother and he had no other means to maintain his family and that by now he has remained in jail for almost 15 months as per the statement produced by the learned APP Shri Gohil, which is ordered to be taken on record.

6. He, therefore, submits that the sentence of five years rigorous imprisonment with fine of Rs. 1,000/- is too harsh, which may be reduced and the order of sentence as already undergone may be passed.

7. In ordinary circumstances, this Court would not interfere with the order of sentence passed by the learned trial Judge under Section 366 of the Indian Penal Code, but having regard to the peculiar facts and circumstances of the case that his co-accused Rukaiyabibi is acquitted by the learned trial Judge and the manner in which the offence was committed by the accused and other circumstances like the age, poor financial condition and other family circumstances of the accused, I am of the opinion that the order of sentence of five years rigorous imprisonment with fine of Rs. 1,000 is too harsh and the same is required to be reduced and accordingly order of sentence as already undergone is passed by setting aside the order of fine of Rs. 1000/-. If the fine is paid, the same shall be refunded to the accused.

8. Accordingly, this criminal appeal is partly allowed to the extent that the order of sentence of rigorous imprisonment for five years imposed against the appellant accused for the offence under Section 366 of the Indian Penal Code with fine of Rs. 1,000/- is reduced as sentence already undergone by setting aside the order of fine of Rs. 1,000/-. If the accused is not required in any other offence, then he may be released and set at liberty forthwith.

As the appeal is allowed, no separate order is required to be passed on the bail application and accordingly, bail application is also disposed of.

(B.J.Shethna, J.)

*/Mohandas